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STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
LANSING

KEITH W. COOLEY
DIRECTOR

STATE BOUNDARY COMMISSION

DOCKET # 07-AP-7 GRAND LEDGE – ONEIDA TOWNSHIP **7-DAY REBUTTAL MATERIAL** **MAY 28, 2008 – JUNE 3, 2008**

CORRESPONDENCE FROM

DATED/RECEIVED

1. SHANE BOLLEY
Attorney for City of Grand Ledge
2. WILLIAM K. FAHEY
Attorney for Oneida Charter Township

JUNE 3, 2008

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DEPT. OF LABOR & ECONOMIC GROWTH

JUN - 3 2008

STATE BOUNDARY COMMISSION

June 3, 2008

VIA HAND DELIVERY

Christine Holmes, Manager
Department of Labor and Economic Growth
Bureau of Construction Codes
State Boundary Commission
Post Office Box 30704
Lansing, Michigan 48909

Re: *Petition for Annexation of Territory in Oneida Charter Township to
The City of Grand Ledge; State Boundary Commission Docket No. 07-AP-07*

Dear Ms. Holmes:

The following is offered to the Boundary Commission pursuant to the provision for a seven-day rebuttal period.

The City agrees that the criteria provided in MCL 123.1009 must be considered by the Boundary Commission as it contemplates a Petition for Annexation.

However, nowhere to be found are "objective" criteria or "standards" as counsel for the Township avers. There are no numbers, high or low, no thresholds, or conditions to be found in the "criteria" of the statute. In fact, the standard is, really, reasonableness and, as our Michigan Supreme Court stated, it is reasonableness that, when based on consideration of the criteria, "is a sufficient guideline for the exercise of Commission discretion." (Township 30 Day Material, page 3, citing *Midland Township*, 401 Mich 641 at 667-669.)

Oddly enough, in the 30-Day Material submitted by the Township, instead of being treated individually, the eighteen criteria have been clustered into eight general topic areas, making it even more obvious that there are not distinguishable standards for each. Obvious examples of the lack of standards are the first two criteria, "population" and "population density." The statute provides no guidance to the Commission as to whether either the City or the Township could have too many or too few residents, or be too densely or sparsely populated to warrant annexation. However, as was aptly pointed out by the Township, in this case, the population density of the 8+ acres proposed for annexation is much closer to the density of the City than of the Township, surely supporting the reasonable conclusion that the parcel would be a good fit in the City.

Detailed information regarding each of the eighteen criteria has been provided in the City's Criteria Questionnaire. Continuing with Criteria No. 3, the City would summarize the reasonableness of the remaining criteria in support of annexation as follows:

3. **Land Area** - The area is comprised of 8.48 acres, owned by a single entity that has on its own petitioned for annexation.
4. **Land Uses** - The area proposed to be annexed is presently improved with multiple family residential structures. The owner is not speculating about a future relationship with either the City or Township, the property has already been improved and the owner has elected to request a boundary change. The property to be annexed shares a private road with its adjacent sister property (which is located within the City) and the owner would like to have each located in the same jurisdiction, the City.
5. **Assessed Valuation** - The 2007 State Equalized Value for the area was \$1,318,000.
6. **Topography** - There are no unusual topographic features.
7. **Natural Boundaries and Drainage Basins** - The area drains west toward Sandstone Creek.
8. **Growth** - New City businesses numbered 150 in the last five years, and 50 more expanded their operations, with a total of 430 new jobs created. During the same five-year period, 179 businesses closed or moved and 100 more reduced their operations, and some 400 jobs were lost. The City population has enjoyed increases from 6,920 in 1980 to 7,813 in the year 2000.
9. **Comparison of the City of Grand Ledge and Oneida Township** - Comparative data for the two communities may be found in greater detail in each community's questionnaire.
10. **Need for Organized Community Services** - At a minimum, the services expected from the City include around the clock police services, professional planning and development staff, the provision of street lighting, public water at a cost lower than available in the Township, and sanitary sewer.
11. **Present Cost and Adequacy of Services** - The property owner currently pays double rates for water and would enjoy a 50 percent decrease in rates upon the Commission's granting of his request for annexation. The property is already served by sewer with no disparity between Township and City for use.
12. **Probable Need for Future Services** - The Township has undertaken to state that the City agrees that there is no need for additional public services to Oak Tree Village; but the City does not agree. In fact, it is the City's understanding that Petitioner prefers a full time Police Department over the part time and on-call Sheriff's Department and State Police services currently provided in the Township. The

property is currently served by part-time contract with the County Sheriff's Office, which provides an average of only 3.5 patrol hours to the entire 33+ square miles of Township per day.

Further, the property owners have stated a preference for the lower water rates that they would experience if annexed to the City, and would also prefer the benefit of the City's professional planning and development staff for future development purposes.

13. **The Practicability of Supplying Services to the Area to be Annexed** – The City already provides water and sewer to the area proposed for annexation, and full services to the adjacent Independence Village property, including, but not limited to, police, fire, emergency medical, planning and zoning, tax assessment, municipal water and sanitary sewer.
14. **The Probable Effect of the Proposed Annexation and of Alternative Courses of Action on the Cost and Adequacy of Services in the Area to be Annexed and on the Remaining Portion of the Unit From Which the Area Will Be Detached** – Counsel for the Township contends that the annexation would negatively impact the "entire community" in several ways. First, the City contends it is part of the "community," and denies there will be any negative effect from granting the annexation request and adding eight plus acres of land to its jurisdiction. More importantly, the City denies that the loss of this small parcel of land will "deprive the Township of the ability to plan for its future physical and financial growth." To the contrary, it should inspire the Township to do just that, if it desires growth, for this annexation petition was not submitted by the City; it was submitted by a property owner in the Township that would prefer to be in the City. It is not the City "taking"; it is the property owner wishing to leave.
15. **The Probable Increase in Taxes in the Area to be Annexed in Relation to the Benefits to be Accrued from Annexation.** Inasmuch as this Petition was filed by the property owner, not by the City, and is indicative of the owner's desire, any increase in tax upon the property is a moot issue.
16. **The Financial Ability of the Annexing Municipality to Maintain Urban Type Services in the Area** – The City of Grand Ledge does not have any bonded indebtedness that affects the area proposed for annexation, and is solvent in every respect.
17. **The General Effect Upon the Entire Community of he Proposed Action** – The City of Grand Ledge, as well as the surrounding area, would benefit from the development of a balanced combination of commercial and new residential opportunities, increasing the City's tax base, the potential for additional students in the Grand Ledge School District, and new residents to take advantage of and patronize local businesses and enhance community stability, if not growth. Petitioner has stated that without the proposed action the development of the subject property's 7.35 acres could very well be delayed for some time, or abandoned altogether.

18. **The Relationship to Any Established City, County, Township, County or Regional Land Use Plan** – The Petitioner’s proposed development is consistent with established land use plans. The City’s Master Plan admittedly does not provide that property adjoining boundaries should be annexed, if that is the “support” that the Township feels is lacking with respect to the City or Regional Land Use Plan. However, the City’s comprehensive plan does provide for single and multiple-family residential, and some commercial, development in the areas near and adjacent to the area proposed for annexation, thereby providing ample support and encouragement to many property owners adjacent to the City that are or may be considering annexation for their own purposes.

It must be noted that, while the criteria of MCL 123.1009 must be considered, the statute does not claim to be exclusive; that is, the Boundary Commission is not precluded from considering additional information. It is in this case that we find a perfect example of an additional factor which surely should be considered, especially in light of the Supreme Court’s view of reasonableness. In this case, a single, but very important, additional factor should be given considerable weight. This Petition was filed by a sole owner of a unique parcel of land and is not the usual dispute between two communities over a boundary where the desires of property owners may receive less attention. Here, the tables should be turned and the desire of the lone property owner should be granted much credibility during the Boundary Commissioner’s determination of “reasonableness.”

Granting the request of a single individual will not preclude the Township’s successful planning and implementation of community growth; in fact, it should serve to encourage the Township to redouble its efforts to prevent further voluntary departures.

It is important to correct and comment on Item No. 12 of the Township’s 30-day Material, wherein the Township stated the adjacent Independence Village property was “transferred to the City under an Act 7 agreement in 1999” (Actually dated January 11, 2000). It was not transferred by the Act 7 Agreement. In fact, the property was annexed to the City in 1999 and the referenced Act 7 Agreement specifically referred to the annexation action, Docket No. 98-AP-7. However, the Act 7 Agreement did specifically contemplate the Township’s future loss of the property currently proposed for annexation, as it provided that:

[A]dditional property, contiguous to Independence Village, may be added to this Agreement upon the written application of the property owner and the written approval of the City and the Township . . . The City and Township Agree that any additional territory added pursuant to this paragraph shall be annexed from the Township to the City by mutual resolution . . .

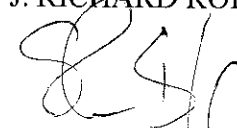
The Act 7 Agreement provides for City taxes on the Independence Village property to be shared with the Township for decades, and for the same terms to be applied to any property added to the Agreement. The trigger is the property owner making a written request. For the Township to claim it is now somehow unfair or unjust for the Petitioner to request annexation, in

light of the Agreement it was a party to in 2000, is entirely contrary to the reasonableness being required of the Commission in this matter.

Given that the Township has thus far declined to grant its approval pursuant to the terms of the Act 7 Agreement and enjoy its contractual share of City taxes through the year 2039, in light of the reasonableness of the criteria considered, and in deference to the owner's petition and specific request, approval of the Annexation Petition would be appropriate in this matter.

Respectfully submitted,

J. RICHARD ROBINSON, P.C.

A handwritten signature in black ink, appearing to read 'SB', is written over the typed name 'Shane Bolley'.

Shane Bolley

SB/mjb

cc: Jon W. Bayless, City Administrator, City of Grand Ledge

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June 3, 2008

via E-Mail

Michigan State Boundary Commission
Office of Land Survey and Remonumentation
Michigan Department of Labor and Economic Growth
6546 Mercantile Way, Suite 3
PO Box 30704
Lansing, MI 48909

Honorable Boundary Commissioners:

Re: Docket No. 07-AP-7

Enclosed for filing is Oneida Charter Township's Rebuttal. The filing consists of a 3-page document, to which Exhibit 1 is attached.

If you have any questions concerning our filing, please do not hesitate to call.

Very truly yours,

FAHEY SCHULTZ BURZYCH RHODES PLC

William K Fahey

William K. Fahey

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
STATE BOUNDARY COMMISSION

In the matter of the proposed annexation
of territory in Oneida Charter Township
to the City of Grand Ledge

Docket No. 07-AP-7

ONEIDA CHARTER TOWNSHIP'S REBUTTAL

INTRODUCTION

Oneida Township's 30-Day Submissions, filed on May 2, 2008, largely anticipated and addressed most of the arguments presented in the City's 30-Day Materials (the Petitioner presented no 30-Day Materials). The City does make some additional arguments that the Township responds to below.

REBUTTAL RESPONSES

The City seems to deny (page 1) that the Home Rule Cities Act contains any "criteria" by which to decide annexation cases. As Oneida Township demonstrated in its 30-Day Submissions (pages 1-3), the City's argument is directly contrary to both MCL 117.9, which lists the required "criteria," and *Midland Township v State Boundary Commission*, 401 Mich 641, 667-669; 259 NW2d 326 (1977), which states that "the Commission shall consider the 'reasonableness' of the proposed annexation based upon the 'criteria' set forth in § 9 of the 1968 act." Indeed, if the Act did not set forth "criteria," it would be an unconstitutional delegation of legislative authority to the Commission. See *Dep't of Natural Resources v Seaman*, 396 Mich 299, 308-9; 240 NW2d 206 (1976) ("In making this determination whether the statute contains sufficient limits or

standards we must be mindful of the fact that such standards must be sufficiently broad to permit efficient administration in order to properly carry out the policy of the Legislature but not so broad as to leave the people unprotected from uncontrolled, arbitrary power in the hands of administrative officials.”) Since it is these statutory “criteria” that legitimize the Commission’s authority, the “criteria” must be followed.

The City next asserts (page 2) that “Oak Tree Village has access to a public road (M-100) only via the private Drive of Independence Village.” The City neglects to mention that this access road, known as Village Drive, is in the Township, and connects to M-100 (Hartel Road) through the Township to the east. In other words, both Oak Tree Village and Independence Village depend exclusively on a road within the Township for their sole access. Please see the aerial map attached as Exhibit 1.

The City’s contention that Oak Tree Village should be annexed to receive service from the “nearest police agency” (page 2) is also off the mark. The local 911 dispatcher is the same for both the City and Township, and will dispatch the closest available unit to the scene. Also, the extra Sheriff patrols the Township has contracted for are more likely to be the first responding units, since they are based at the Township Hall, approximately the same distance from Oak Tree Village as the City Police Department, but not delayed by City traffic and intersections.

The City next mentions lower water rates (page 2), but does not acknowledge that any such savings will be more than offset by the significant increase in property taxes. The decrease in the water rate to Oak Tree Village would be \$5,274 per year if the property were annexed. This would be would more than be offset by the \$14,880 increase in the property taxes that would result from the annexation of Oak Tree Village.

The City also cites the "professional opinion" of Petitioner that a City location would "enhance initial interest in the property," presumably from future investors (page 2). This unsupported "opinion" is refuted by the well-established fact that property values are higher for comparable property in the Township because of the lower taxes that are paid in the Township, among other factors. Thus, for developed property like Oak Tree Village, a location in the City is an economic liability, not an advantage.

Finally, the City cites the 2000 Agreement between the City and the Township (page 2), which the Township also discussed in its 30-Day Submissions (page 5) and attached thereto as Exhibit A. The Township is willing to engage in discussions with the City to possibly reach an agreement regarding the Oak Tree Village property, but the City must recognize that the 2000 Agreement was designed to deal with undeveloped property, and Oak Tree Village is a fully-developed project with 120 residents and 56 residential units. Any agreement for Oak Tree Village will need to reflect these different circumstances, or the parties will be unable to reach an agreement on this property.

RELIEF

Oneida Charter Township respectfully requests that the State Boundary Commission deny the Petition for Annexation, based upon a full consideration of the mandatory statutory criteria and the rebuttal points discussed above.

Respectfully submitted,

FAHEY SCHULTZ BURZYCH RHODES PLC

William K Fahey

Dated: June 3, 2008

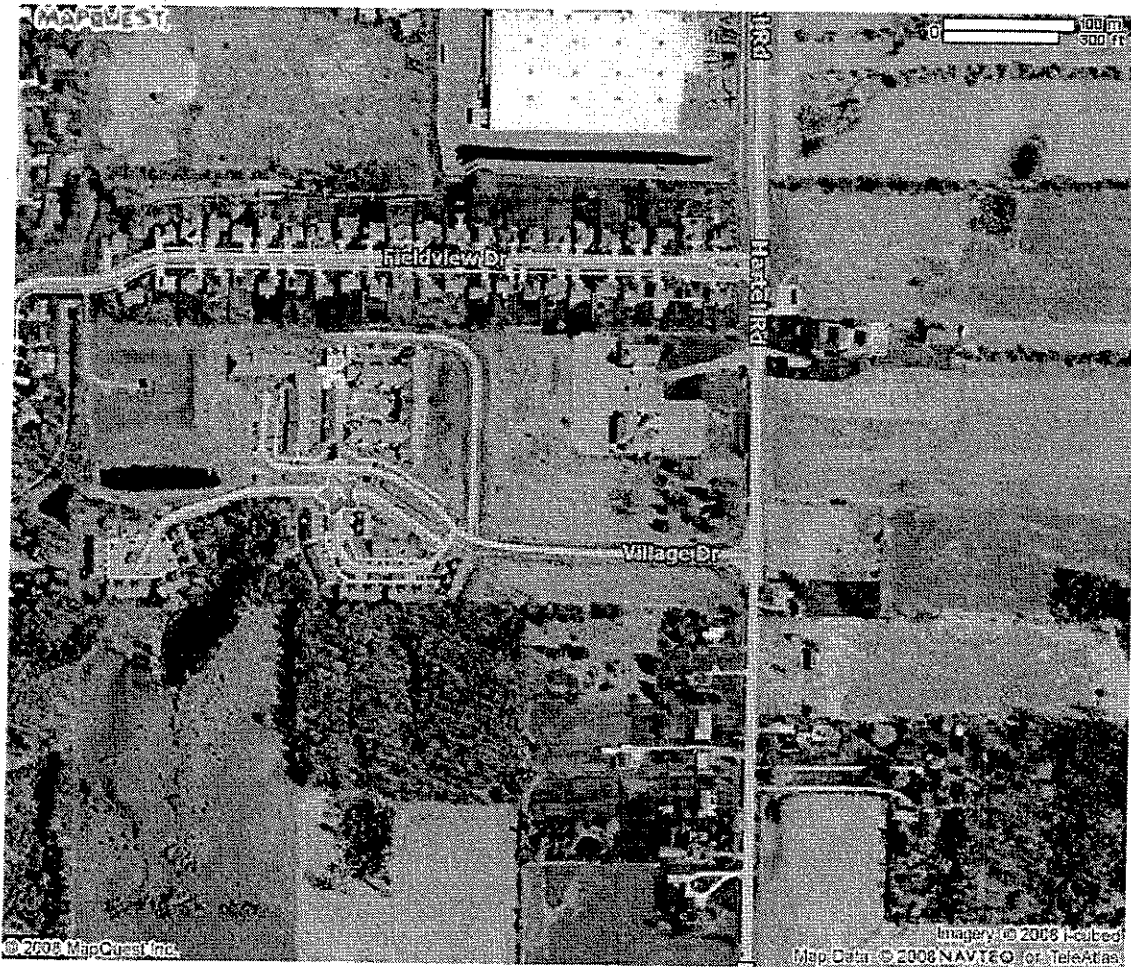
By: _____

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MAPQUEST

EXHIBIT 1

A: Avery Ln & Hampton Ct, Grand Ledge, MI 48837



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